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December 14, 2016

Mr. Jeff Walker
Executive Administrator
Texas Water Development Board
1700 North Congress Avenue
P.O. Box 13231
Austin, TX 78711-3231

Via Hand Delivery

Re: Petition Appealing Desired Future Conditions Adopted by Lone Star GCD

Dear Mr. Walker,

Please find attached a petition from Quadvest, L.P., which was received by the Lone Star Groundwater Conservation District ("District") on December 6, 2016, appealing the desired future conditions adopted by the District. As required by Section 36.1083, Water Code, the District hereby submits this copy of the petition not later than the 10th day after its receipt to the Texas Water Development Board to conduct its review and study as prescribed by the statute.

If you have any questions related to this submission, please do not hesitate to contact me at your convenience.

Sincerely,

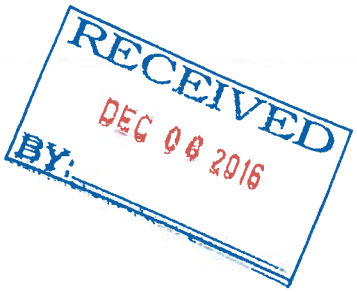
Brian L. Sledge
Legal Counsel for the District

Attachment

CC: Ms. Kathy Turner Jones, General Manager
Mr. Richard Tramm, Board President

SPROUSE SHRADER SMITH P.C.
ATTORNEYS AT LAW

MARVIN W. JONES
(806) 468-3344



December 5, 2016

Via Federal Express

Kathy Turner Jones
General Manager
LONE STAR GROUNDWATER CONSERVATION DISTRICT
655 Conroe Park North Drive
Conroe, Texas 77303

RE: Petition of Quadvest, L.P. Appealing Desired Future Conditions Adopted by Lone Star Groundwater Conservation District

Dear Ms. Jones:

Enclosed please find the Petition of Quadvest, L.P. Appealing the Desired Future Conditions of GMA 14 Adopted by Lone Star Groundwater Conservation District. The petition has been enclosed in both paper and electronic format.

If you have any questions or concerns, please feel free to contact me at (806) 468-3344.

Respectfully,

Marvin W. Jones

Enclosure

cc: Brian Sledge – *via email* bsledge@sledgelaw.com
Simon Sequeira – *via email* simon@quadvest.com
Michael Stoecker – *via email* mike@stoe3ckercorp.com
Michael Powell – *via email* mpowell@lockelord.com

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PETITION OF QUADVEST, L.P.	§	
	§	
APPEALING DESIRED FUTURE	§	
CONDITIONS ADOPTED BY	§	**PURSUANT TO TEX. WATER**
	§	**CODE SEC. 36.1083**
LONE STAR GROUNDWATER	§	
CONSERVATION DISTRICT	§	

PETITION OF QUADVEST, L.P. APPEALING DESIRED FUTURE CONDITIONS OF GMA 14 ADOPTED BY LONE STAR GROUNDWATER CONSERVATION DISTRICT

To the Lone Star Groundwater Conservation District, by and through its Board of Directors, Richard J. Tramm, Sam W. Baker, M. Scott Weisinger P.G., Jim Stinson, P.E., John D Bleyl, P.E., Jace Houston, Roy McCoy, Jr., Rick Moffatt, and W. B. Wood, and General Manager, Kathy Turner Jones, 655 Conroe Park North Drive, Conroe, Texas 77303:

1. Every owner of groundwater rights in the same aquifer is entitled to be treated equally.[1] *Marrs v. Railroad Commission,* 177 S.W.2d 941 (Tex. 1944); *Coyote Lake Ranch, LLC v. City of Lubbock*, ___S.W.3d __, 59 Tex. Sup. J. 967, 2016 Tex. Lexis 415 (May 27, 2016). The groundwater conservation districts of Groundwater Management Area 14 ("GMA 14") have failed to ensure this basic right. For this and other reasons, the Desired Future Conditions ("DFCs") adopted by GMA 14 and Lone Star Groundwater Conservation District ("LSGCD" or "District") are unreasonable.

[1] "Every owner … is entitled to a fair chance to recover the [groundwater] in or under his land … and any denial of such fair chance amounts to confiscation." *Marrs* at 948.

2. Quadvest, L.P. is the owner of groundwater rights within GMA 14 from which it produces groundwater used to serve the consuming public under certificates of convenience and necessity issued by the Public Utility Commission of Texas (PUC). These properties are located within the boundaries of LSGCD.

3. Quadvest, L.P. files this Petition pursuant to Texas Water Code Section 36.1083, requiring LSGCD to contract with the State Office of Administrative Hearings ("SOAH") to conduct a hearing appealing the reasonableness of the DFCs of the groundwater resources established pursuant to Texas Water Code Section 36.108(d-4) by the groundwater conservation districts comprising GMA 14.

I.
BACKGROUND

4. GMA 14 is a groundwater management area designated by the Texas Water Development Board ("TWDB") pursuant to Texas Water Code § 35.004. GMA 14 is comprised of LSGCD, Bluebonnet Groundwater Conservation District, Brazoria County Groundwater Conservation District, Lower Trinity Groundwater Conservation District, and Southeast Texas Groundwater Conservation District. These districts are collectively referred to herein as "the Districts."

5. Quadvest, L.P. is an affected person within the meaning of Texas Water Code Section 36.1083(a)(1) and 31 T.A.C. § 356.10(1) because it is a privately owned utility company and owner of land used to produce water for sale to the public which holds permits issued by LSGCD in the groundwater management area encompassed in GMA 14, and owns groundwater rights in the groundwater management area encompassed in GMA 14.

6. On April 29, 2016, the Districts of GMA 14 officially approved Resolution 2016-01 (Appendix A, Exhibit 1), and LSGCD then adopted the DFCs described therein for Montgomery County on August 9, 2016 (Appendix A, Exhibit 2). This Petition is filed not later than the 120th day after the date on which LSGCD actually adopted such DFCs.

7. Appendix A lists technical and scientific evidence upon which Quadvest, L.P. relies to demonstrate that the DFCs adopted by LSGCD are not reasonable. Appendix A outlines the undisputed fact that none of the aquifers underlying GMA 14 are encompassed by county lines; all the aquifers extend over most, if not all, of the area of GMA 14, without regard to the political subdivisions lines of cities or counties.

8. The Districts of GMA 14 issued their Explanatory Report (Appendix A, Exhibit 10) as required by Texas Water Code Section

36.108(d-3). In the Explanatory Report, the Districts admit that the basis for the adopted DFCs was the protection of existing well owners from having to lower their pumps or drill new wells. (Explanatory Report at Section 4.1, pages 27-28). But that action prohibits other groundwater owners from accessing and enjoying that which is their constitutionally protected property. The Explanatory Report further admits that the second—and only other—justification for the GMA 14 DFCs is to prevent subsidence. But the Explanatory Report lumps all aquifers in all counties into its subsidence rationale; the undisputed scientific evidence shows that (a) there is relatively little to no subsidence in Montgomery County, and (b) there is not and will never be subsidence in the Jasper aquifer.

9. In other words, the Explanatory Report fails to justify the Montgomery County DFCs, which are based entirely on LSGCD's predetermined notions of how much groundwater it will "give" the owners of groundwater in its territory. This violation of private property rights compels the conclusion that the DFCs are unreasonable.

10. For these and other reasons, the DFCs adopted by LSGCD are not reasonable.

II.
LEGAL PRINCIPLES

11. Groundwater rights are a valuable and fundamental attribute of private property ownership in Texas. *Edwards Aquifer Authority v. Day*, 369 S.W.3d 814 (Tex. 2012); TEX. WATER CODE § 36.002. An unbroken line of Texas Supreme Court opinions has recognized the significant value of those groundwater rights, acknowledged Texas landowners' reliance on those valuable rights, and vigorously enforced statutory and constitutional protections of those rights. *Day*, 369 S.W.3d at 814; *Houston and Texas Central Railroad Co. v. East*, 81 S.W. 279 (Tex. 1904); *Texas Co. v. Burkett*, 296 S.W. 273, 278 (Tex. 1927); *City of Corpus Christi v. City of Pleasanton*, 276 S. W.2d 798 (Tex. 1955); *Sun Oil Co. v. Whitaker*, 483 S.W.2d 808, 811 (Tex. 1972); *Friendswood Dev. Co. v. Smith-Southwest Indus., Inc.*, 576 S.W.2d 21, 25-27 (Tex. 1978); *City of Sherman v. PUC*, 643 S.W.2d 681, 686 (Tex. 1983); *Moser v. United States Steel*, 676 S.W.2d 99, 102 (Tex. 1984); *Gifford-Hill & Co. v. Wise County Appraisal Dist.*, 827 S.W.2d 811, 815n.6 (Tex. 1992); *Sipriano v. Great Spring Waters of America*, 1 S.W.3d 75, 79 (Tex. 1999). *See also Edwards Aquifer Authority v. Bragg*, 421 S.W.3d 118 (Tex. App.—San Antonio 2013, pet. denied); *Pecos County WCID No. I v. Williams*, 271 S.W.2d 503 (Tex. Civ. App.—El

Paso 1954, writ ref'd n.r.e.); *Bartley v. Sone*, 527 S.W.2d 754, 759-60 (Tex. Civ. App.—San Antonio 1975, writ ref'd n.r.e.); *City of Del Rio v. Clayton Sam Colt Hamilton Trust*, 269 S.W.3d 613, 617-618 (Tex. App.—San Antonio 2008, pet. denied); S*ee also* U.S. Const. Amend. V, XIV; TEX. CONST. ART. I, §17; TEX. WATER CODE § 36.002.; S*ee generally* W. HUTCHINS, THE TEXAS LAW OF WATER RIGHTS, 556-572 (1961); Drummond, Sherman & McCarthy, *The Rule of Capture in Texas-Still Misunderstood After All of These Years*, 37 Tex. Tech. L. Rev. 1 (2004); Jones & Little, *The Ownership of Groundwater in Texas: A Contrived Battle For State Control of Groundwater*, 61 Baylor Law Rev. 578 (2009).

12. Chapter 36 of the Texas Water Code, from which the Districts derive their existence and authority, expressly recognizes and adopts the common law rule vesting ownership of groundwater in landowners. TEX. WATER CODE § 36.002. Section 36.002 states in pertinent part that a landowner, including lessees and assigns, "owns the groundwater below the surface of the landowner's land as real property'' and that "[n]othing in this code shall be construed as granting the authority to deprive or divest a landowner, including a landowner's lessees, heirs, or assigns, of the groundwater ownership and rights described by this section." TEX. WATER CODE § 36.002(a), (c), (emphasis added).

13. In analyzing the propriety of the actions of a groundwater conservation district, the Supreme Court has expressly held that analogous legal principles developed in oil and gas cases may provide direction in matters involving groundwater. *Day* at 831; *Coyote Lake Ranch, LLC,* No. 14-0572,___S.W.3d __, 59 Tex. Sup. J. 967, 2016 Tex. Lexis 415 *27-28 (May 27, 2016). ("Analogizing groundwater to minerals in determining the applicability of the accommodation doctrine is no less valid than it is in determining ownership. Common law rules governing mineral and groundwater estates are not merely similar; they are drawn from each other or from the same source.")

14. Under the Texas Constitution, a groundwater conservation district like LSGCD has only powers as "may be conferred by law." TEX. CONST. Art. XVI, §59(b). Accordingly, the power of LSGCD is limited to the terms of its applicable statutes; LSGCD can exercise no authority the Legislature has not clearly granted. *See, e.g., Tri-City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d 945, 948 (Tex. 1941) ("The powers of such districts are measured by the terms of the statutes which authorized their creation, and they can exercise no authority that has not been clearly granted by the legislature."); *South Plains Lamesa RR, Ltd. v. High Plains*

Underground Water Conservation Dist. No. 1, 52 S.W.3d 770, 776 (Tex. App.—Amarillo 2001, no pet.).

III.
THE ADOPTED DFCS FAIL TO PROTECT PRIVATE PROPERTY RIGHTS

15. By statute, the districts in GMA 14 are required to consider the impact of proposed DFCs on private property, including ownership and the rights of management area landowners and their lessee and assigns in groundwater. Texas Water Code §36.108(d)(7). The District failed to consider the impact of proposed DFCs on private property, including ownership and the rights of management area landowners and their lessee and assigns in groundwater. The adopted DFCs will damage or destroy private property, including ownership and the rights of management area landowners and their lessee and assigns in groundwater.

16. The Explanatory Report notes at page 27 that "the two overriding policy justifications for the DFCs adopted by GMA 14 are socioeconomic considerations and impacts on private property rights."

17. At page 28 of the Explanatory Report, the Districts admit:

> "[t]he primary economic and private property impact analyses that were considered by the GMA 14 District Representatives that justify the adoption of the DFCs were the impacts of those DFCs on **the economic costs to landowners of producing groundwater**. The

> evidence clearly indicates that economic considerations, and their inseparability from protection of private property rights, are the controlling factor behind the selection of the adopted DFCs." (Emphasis in original).

18. The Explanatory Report then attempts to tie this supposed economic harm incurred by the favored few to a secondary concern for "subsidence" that might be caused by increased production. The analysis is flawed and fails for several reasons.

19. First, and perhaps of the greatest constitutional concern, is the explicit decision that those who are currently accessing their private property should be protected from production that exceeds the current recharge[2] so that these current producers will not have to lower their pumps. The correlative rights of those who are not currently producing groundwater are disregarded by the Districts. The GMA 14 approach, then, is to implement a de facto historic use regime that disadvantages groundwater rights owners except those who currently produce groundwater. This approach to regulation was examined in *Bragg v. Edwards Aquifer Authority,* 421 S.W.3d 118 (Tex. App.--San Antonio, writ den'd) and found to result in a taking of private property for public purposes without compensation, in derogation of the constitutional protections afforded to private property

[2] As noted more fully below, Quadvest does not agree that current recharge is 64,000 acre feet per year. That estimate is scientifically flawed, or put another way, is not based on the best available science.

owners. The District's approach is actually worse than *Bragg* because it amounts to a taking of private property for private purposes, which is not allowed in Texas.[3] DFCs that result in unconstitutional takings are unreasonable as a matter of law.

20. Second, the LSGCD DFCs have and will result in rules that deprive groundwater rights owners in Montgomery County of their fair opportunity to produce a fair share of the groundwater beneath the county. This happens because groundwater owners who are not producing today lose their right to equal access to their private property so that the current producers won't be required to lower their pumps or drill new wells. The Texas Supreme Court has explicitly stated that groundwater rights owners are entitled to produce a fair share of the groundwater in an aquifer. *Day* at 830. This is in accord with well-settled law in the oil and gas area. *See Railroad Commission v. Shell Oil*, 380 S.W.2d 556 (Tex. 1964); *Railroad Commission v. Williams*, 356 S.W.2d 131 (Tex. 1961). *See also, Elliff v. Texon Drilling Co.*, 210 S.W.2d 558, 562 (1948) ("[O]ur courts, in decisions involving well-spacing regulations of our Railroad Commission, have frequently announced the sound view that each landowner should be

[3] *See* Texas Gov't Code Section 2206.001,*et seq.*

afforded the opportunity to produce his fair share of the recoverable oil and gas beneath his land....").

21. Third, the Explanatory Report fails to quantify the cost to the current producers to lower pumps or drill deeper wells. Further, the Explanatory Report fails to analyze or quantify the market value of the groundwater in storage put "off limits" by the LSGCD DFCs. Every owner of groundwater rights is damaged by LSGCD's actions because all groundwater in storage—as much as 180 million acre feet[4]—has been condemned and becomes valueless. If that groundwater is valued at the cost of surface water from San Jacinto River Authority, then the DFCs and resulting regulatory rules effectively condemn billions of dollars of groundwater. Given the magnitude of this harm, it is hard to imagine that the cost to current producers of lowering pumps or drilling new wells outweighs the economic loss to all other groundwater rights owners. But again, the Explanatory Report fails to quantify either cost.

22. In an attempt to achieve its DFCs, LSGCD has adopted (and will be required to continue to enforce) rules regarding production of groundwater that are more restrictive than those of neighboring districts. The

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[4] Exhibit 7: Shirley Wade, Ph.D., P.G., David Thorkildsen, P.G., and Roberto Anaya, P.G., *GAM Task 13-037: Total Estimated Recoverable Storage for Aquifers in Groundwater Management Area 14*, Texas Water Development Board (June 09, 2014)("TERS Report").

DFCs and rules adopted by LSGCD explicitly prevent any use of groundwater in storage under Montgomery County, a resource that belongs to the landowners and groundwater rights owners. As a result, groundwater in storage in Montgomery County will be captured by production from wells outside the County's boundaries. This drainage of privately owned real property will be the result of the actions of Defendants, a governmental entity and its officials, without compensation to Plaintiffs. Moreover, the lack of ability to offset drainage and the lower production limits, together and separately, have caused and will cause a diminution in the fair market value of all groundwater rights in Montgomery County. None of these factors are considered in the superficial analysis set forth in the Explanatory Report.

23. As a second justification for the LSGCD DFCs, the Explanatory Report relies on the "economic costs" caused by subsidence in GMA 14. However, the Report wholly fails to acknowledge that the greatest amount of groundwater in storage in Montgomery County is found in the Jasper Aquifer, where the greatest current pumping takes place. The attached affidavit of Michael Thornhill (Appendix A, Exhibit 8) demonstrates that no subsidence has ever occurred or will ever occur from pumping in the Jasper

aquifer. Thus, from a factual standpoint, the rationale for LSGCD's DFCs is fundamentally wrong.

24. The Explanatory Report boils its DFC justifications down to two premises, both of which are demonstrably wrong. Because the LSGCD DFCs result in a prohibited taking of private property, they are unreasonable as a matter of law.

IV.
LSGCD ESTABLISHED MULTIPLE DFCs FOR THE SAME AQUIFERS

25. Contrary to Tex. Water Code Section 36.108(d) and contrary to GMA 14's own administrative rules, the groundwater conservation districts of GMA 14 (including LSGCD) adopted multiple DFC's for the same aquifers within GMA 14, based on political subdivision lines rather than aquifer subdivisions or conditions. Such DFCs are unreasonable because (1) DFCs that vary from county to county over the same aquifer violate the statutory directives for establishing DFCs; (2) TWDB staff has previously issued a memorandum discouraging DFCs based solely on political subdivisions; and (3) the DFCs violate GMA 14's own administrative rules. (Appendix A, Exhibit 11). As noted above, multiple DFCs for a single aquifer will ultimately result in disparate and unequal rules and regulatory requirements that deprive groundwater rights owners of their right to a fair

opportunity to produce a fair share of the groundwater in the relevant aquifers.

26. GMA 14 includes several different aquifers of the Gulf Coast aquifer system. These aquifers are not confined to the area encompassed by the boundaries of LSGCD, and the boundaries of LSGCD (the political lines outlining Montgomery County) are not coterminous with the boundaries of any of such aquifers. (Affidavit of Thornhill, Appendix A, Exhibit 8). None of the groundwater conservation districts of GMA 14 completely encompass any of the aquifers in the management area of GMA 14, and no groundwater conservation district in GMA 14 has boundaries coterminous with the boundaries of any such aquifers. *Id.*

27. Withdrawals of groundwater from the aquifers of the Gulf Coast aquifer system outside the boundaries of LSGCD can and will affect the groundwater resources inside the boundaries of LSGCD. *Id.* Therefore, production from any of the Gulf Coast aquifers under Montgomery County will affect groundwater in adjacent counties, and production from any of those aquifers under any adjacent counties will impact groundwater in Montgomery County. *Id.* LSGCD cannot change that hydrological fact.

28. On April 29, 2016, the groundwater conservation districts of GMA 14 adopted the DFCs reflected in Resolution 2016-01-01, a copy of

which is attached as Exhibit 2 to Appendix A. In that resolution, the groundwater conservation districts of GMA 14 claimed to adopt a single DFC for each relevant aquifer across the entire breadth of GMA 14, but also adopted different and separate DFCs for each relevant aquifer in each separate county encompassed in GMA 14. Thus, as an example, the Jasper Aquifer in Montgomery County and Liberty County has two DFCs, described in terms of "average draw down" from estimated 2009 conditions after 61 years:

County	County DFC	GMA-Wide DFC
Montgomery	34	66.2
Liberty	120	66.2

29. Montgomery and Liberty Counties are adjacent to one another. There is no aquifer subdivision or other hydrological barrier in the Jasper Aquifer as it exists between Montgomery and Liberty counties. *Id.* Production of groundwater on one side of the county line will affect groundwater on the other side. *Id.* There is no groundwater conservation district in Liberty County, and there are no production limits or spacing and density rules that apply to that county.

The GMA 14 DFCs are Contrary to the Intent of Water Code § 36.108

30. The differing county-specific DFCs adopted by the Districts violate the statutory direction for DFCs. Section 36.108(d-1) of the TEXAS WATER CODE, provides:

> (d-1) The districts may establish different desired future conditions for:
>
> (1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or
>
> (2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

31. The groundwater conservation districts of GMA 14, including LSGCD, have violated the provisions of Texas Water Code § 36.108(d-1) by adopting different DFCs for each of the aquifers in each of the counties in GMA 14. There are no identified aquifer subdivisions in any of the aquifers of the Gulf Coast aquifer system. Specifically, there are no identified subdivisions in the Jasper Aquifer, no identified subdivisions in the Evangeline Aquifer, and no identified subdivisions in the Chicot Aquifer. *Id.* There are no identified geographical areas overlying the aquifer as they relate to unique or specific natural conditions that would affect groundwater. The DFCs established for GMA 14 are tied strictly to political subdivision

lines which do not delineate substantial and discernible differences in uses or conditions of these aquifers, either coincidentally or otherwise. *Id.* The DFCs adopted by the districts of GMA 14 are based entirely on political subdivision lines, and the aquifers do not "see" those political lines. LSGCD is not authorized by the Texas Water Code to adopt DFCs based only on political subdivision lines.

32. The DFCs for LSGCD's Montgomery County are not based on substantial and discernible differences in uses or conditions as between the two counties, but on the stated objective of LSGCD to limit groundwater production to what it mistakenly claims to be a "sustainable" amount equal to just the recharge to the portions of aquifers within Montgomery County. *See, e.g.,* Lone Star Groundwater Conservation District Groundwater Management Plan adopted October 14, 2003 at p. 8 ("The estimated annual amount of recharge to the groundwater resources of the District is 64,000 acre-feet per year."); [5] Lone Star Groundwater Conservation District Groundwater Management Plan adopted October 14, 2008 at p. 7 ("However, in 2003, the District adopted in its Management Plan an

[5] Available at http://lonestargcd.org/wp-content/uploads/2014/09/031014-Final-Adopted-Management-Plan-BS.pdf (last visited September 22, 2016).

available useable groundwater amount of 64,000 acre-feet per year."); [6] Lone Star Groundwater Conservation District Groundwater Management Plan adopted November 12, 2013 at p. 6 ("Pursuant to the District Rules and this management plan, the District shall seek to limit production of groundwater from the resources within its boundaries to a sustainable level, so that the groundwater resources of Montgomery County are not depleted for future generations. For purposes of this plan, the word sustainable" means limiting total groundwater production in the District or in a management zone designated by the District to an amount that does not exceed the amount of effective deep aquifer recharge available in the District or the management zone, as applicable when averaged over a term of years to be determined by the District.") [7]

33. This "sustainable amount" of 64,000 acre-feet per year has been in the LSGCD management plan (and implementing rules) since well before any DFCs were ever mandated by the Legislature or adopted by LSGCD. The 2016 DFC for the Jasper Aquifer of no more than 34 feet of drawdown over the next 60 years is based solely on LGGCD's desire to limit groundwater production in Montgomery County to an amount equal to the

[6] Available at http://lonestargcd.org/wp-content/uploads/2014/09/031014-Final-Adopted-Management-Plan-BS.pdf (last visited September 22, 2016).

[7] Available at http://lonestargcd.org/wp-content/uploads/2014/09/Lone-Star-Mgmt-Plan-Update-2013-FINAL.pdf (last visited September 22, 2016).

recharge, i.e., 64,000 acre-feet per year. *Id.* The Jasper DFC is therefore not based on the factors set forth in Section 36.108(d-1), but on a decision made long ago, before the Legislature created the requirement for DFCs. Basing DFCs on political or non-scientific feelings rather than the factors set forth in Texas Water Code Section 36.108(d) is pure pretense, and unreasonable as a matter of law.

34. Not only is the recharge calculation arbitrary and wrong,[8] it is not based on and does not equate to "substantial and discernible difference in uses or conditions" of the aquifers. The resulting DFC for each aquifer is simply "reverse-engineered" to meet the above-stated political objective of LSGCD. *Id.* Basing DFCs on political subdivision lines is unreasonable where political subdivision lines do not reflect substantial and discernible differences in uses or conditions of an aquifer.

The GMA 14 DFCs Are Contrary to TWDB Opinions

35. On March 10, 2010, TWDB staff prepared a memo to its board discussing the use of "geographic areas" in establishing DFCs. (Appendix A, Exhibit 9). In that Memorandum, TWDB Director of Groundwater Resources William R. "Bill" Hutchison and General Counsel Kenneth L.

[8] LSGCD has struggled to explain the origin of the 64,000 acre feet number, but it appears to be based on a simplistic calculation of rainfall that makes its way to each acre of surface over of the aquifers multiplied by the acres in the county, without regard for the size of the recharge zones of the separate aquifers or inflows from other counties.

Petersen presented the issue whether districts in a GMA may delineate different "geographic areas" within the GMA by use of political subdivision boundaries. Hutchison and Petersen advised the TWDB that such practice was defensible only if the political subdivision boundaries happened to coincide with "substantial and discernible differences in uses or conditions" within the GMA. TWDB's Memorandum continues: "It should be emphasized that employing geographic areas that are not based on clear and substantial differences in uses or aquifer conditions is not supportable, regardless of how those geographic areas are drawn." The Memorandum concludes:

> The argument that the omission of "political subdivision boundaries" from Section 36.108(d) is not persuasive, as long as the groundwater conservation districts do not appear to be using county or other political subdivision lines to gerrymander DFCs for purposes other than accommodating discernible, substantial differences in uses or aquifer conditions within the GMA.

36. Accordingly, the DFCs adopted by the Districts of GMA 14, including LSGCD, are unreasonable because they fail to adhere to TWDB's guidance; Texas Water Code Section 36.108(d-1); and *Marrs v. Railroad Commission*, 177 S.W.2d 941 (Tex. 1944).

37. Section 4.3 of the Explanatory Report relies on Texas Water Code §36.108(d-1) to justify its disparate DFCs for the same aquifer, claiming that the Legislature intended to allow GCDs to establish different DFCs based on political subdivision boundaries. To the extent that Section 36.108(d-1) is construed to allow arbitrary lines to be drawn across an aquifer for regulatory purposes, that legislation would be unconstitutional. *See Marrs,* 177 S.W.2d 941. Texas courts are instructed to avoid construction of a statute that would render the statute unconstitutional. *City of Houston v. Clark*, 197 S.W.3d 314, 320 (Tex. 2006); *Brady v. Fourteenth Court of Appeals*, 795 S.W.2d 712, 715 (Tex. 1990); Texas Gov't Code § 311.021.

The GMA 14 DFCs are Contrary to GMA 14's Administrative Rules

38. The groundwater conservation districts of GMA 14 adopted certain administrative procedures for the consideration, proposal, and adoption of desired future conditions for GMA 14 ("GMA 14 Administrative Procedures," Appendix A, Exhibit 11) Included in the administrative procedures are the following sections:

a. "Section 2.04 The GMA 14 Member Districts, as a group to engage in joint planning activities, shall have only the power granted by Chapter 36, Water Code, that relates to joint planning activities."

b. "Section 3.05 Only after consideration of the nine statutory factors as stated in Section 3.04 may a DFC option become eligible for approval as the proposed DFC. **For each relevant aquifer** in GMA 14, the Member District Representatives shall approve by two-thirds vote of the total Member District Representatives **one DFC option** to serve as the proposed DFC as required by Sections 36.108(d) and (d-2), Water Code. The proposed DFC must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in GMA 14. (Emphasis added).

39. In undertaking to define different DFCs for each aquifer in each county of GMA14 as noted above, the districts, including LSGCD, have violated Section 2.04 of the GMA 14 Administrative Procedures specifying that the Districts have only the power granted by Chapter 36 of the Texas Water Code that relates to joint planning activities.

40. The groundwater conservation districts of GMA 14, including LSGCD, have violated Section 3.04 of the GMA 14 Administrative Procedures by adopting more than one DFC for each relevant aquifer within GMA 14.

41. Adopting two DFCs for each relevant aquifer in each county prevents each groundwater conservation district from complying with the requirements of Texas Water Code Sections 36.1085 and 36.1132, which requires each district to achieve the DFC of each aquifer. Adopting two

DFCs for each relevant aquifer also prevents TWDB from designating the "modeled available groundwater" for each relevant aquifer pursuant to Texas Water Code Section 36.1084.[9]

42. Section 4.3 of the Explanatory Report attempts to disguise the reality that GMA 14 adopted different DFCs based on county lines. That section states that only one DFC was adopted for each relevant aquifer in GMA14, and the average drawdown for each county was then calculated. The Explanatory Report claims that the DFCs adopted for each aquifer in each GCD were not DFCs at all, but just a calculated average of GMA-wide DFCs. However, the Explanatory Report at Section 3.0 sets forth the adopted DFCs for both GMA 14 and for the individual counties in GMA 14, expressing all DFCs in identical language, and states that the county DFCs are "...to better facilitate the management and conservation of groundwater resources at the individual GCD level..." If only one DFC has been adopted by GMA 14 for the Jasper aquifer, then LSGCD must amend its rules to allow groundwater owners in Montgomery County to produce an amount of groundwater up to the point that the total volume of exempt and permitted

[9] In calculating the Modeled Available Groundwater for LSGCD, for example, will the TWDB use the adopted DFC for the Jasper Aquifer as stated for Montgomery County, or will the TWDB calculate one MAG number for the Jasper Aquifer on a GMA-wide level? Or will it calculate two MAG numbers for each aquifer for each county? Will each GCD have separate rules designed to implement the individual county DFCs, or will all the GCDs have a single set of rules designed to achieve the GMA-wide DFC for each aquifer?

groundwater production could cause 66.2 feet of drawdown in the Jasper aquifer over the next 61 years. Texas Water Code § 36.1132. The District has not done so, but has persisted in imposing restrictions that would allow only 34 feet of drawdown in that aquifer over that period.

43. Because all the GCDs in GMA 14 have different rules, and because the county level DFCs were reversed engineered to reflect local political decisions, the statement in the Explanatory Report is disingenuous, designed to disguise the fact that GMA 14 adopted a different DFC for each aquifer in each county. The existence of the statement in Section 3.1 indicates that the Districts were aware of the requirements of the statute, and were simply glossing over their failure to follow the command of the Legislature.

V.
THE GMA 14 DFCS FAIL TO MEET STATUTORY CRITERIA

44. The Explanatory Report provided by GMA 14 reveals that the Districts failed to meet several statutory criteria that must be considered as part of the DFC process. Further, the Explanatory Report is not based on the type of analytical process contemplated or required under Texas Water Code § 36.108.

45. By statute, the districts in GMA 14 are required to consider the total estimated recoverable storage ("TERS") in an aquifer before voting on DFCs. Texas Water Code Section 36.108(d)(3). Although TWDB issued a TERS Report for GMA 14 (Appendix A, Exhibit 7), the District failed to actually consider the total estimated recoverable storage of the aquifers in question. In fact, Section 5.3 of the Explanatory Report admits that the Districts ignored the TERS report because of "the negative socioeconomic impacts of subsidence." But subsidence is not relevant to the Jasper Aquifer, so ignoring the TERS is not reasonable as to that aquifer.

46. The adopted DFCs are artificially and adversely impacted by the failure to consider total estimated recoverable storage. Because the DFCs do not address aquifer storage, the rights of groundwater owners in the District's boundaries are adversely impacted.

47. The Districts of GMA 14 failed to provide an explanatory report for each DFC for each aquifer in each groundwater conservation district of GMA 14 as required by statute. The alleged justifications for the adopted DFCs wholly fail to address each aquifer separately, and the justifications set forth in the Explanatory Report either do not apply to all aquifers, or do not apply in the same manner to all aquifers.

VI.
INCORPORATION BY REFERENCE OF PETITION OF CITIES OF CONROE AND MAGNOLIA, TEXAS

48. The Cities of Conroe and Magnolia, Texas have filed their petition challenging the DFCs adopted by LSGCD. Quadvest, L.P. hereby incorporates by reference all of the matters set forth in the Petition of The Cities of Conroe and Magnolia, Texas Appealing Desired Future Conditions of GMA 14 Adopted By Lone Star Groundwater Conservation District, together with all attachments and exhibits to that Petition.

VII.
REQUESTS FOR LSGCD ACTION

49. Quadvest, L.P. respectfully requests that this Board contract with SOAH to conduct a hearing with respect to the reasonableness of the DFCs adopted by LSGCD, and to perform the other duties required of it pursuant to Texas Water Code Section 36.1083.

50. Texas Water Code § 36.1083(e) requires this Board to forward a copy of this Petition to TWDB to conduct a study containing scientific and technical analysis of the DFCs. However, Quadvest respectfully submits that this procedure would place TWDB in an irreconcilable conflict of interest because TWDB holds more than $400,000,000 in bonds issued by San Jacinto River Authority, which bonds explicitly state that a risk of bond

purchase is that SJRA has based its System (as defined in the bond issuance) and budget on the requirements set forth in the LSGCD regulations. Accordingly, TWDB's substantial investment in SJRA bonds could be at risk if LSGCD must alter its regulations as a result of its DFCs being struck down as unreasonable. At the least, TWDB should be requested to direct its members, employees, and staff to refrain from communicating with the parties, their agents, attorneys, witnesses, and representatives, including the Mr. Mullican and the consultants involved in preparing the questioned DFCs or the Explanatory Report.

51. Quadvest, L.P. requests SOAH to conduct all pre-hearing conferences, discovery matters, and contested case hearing pursuant to Texas Water Code Section 36.1083 and consistent with the procedural rules of the office and all other applicable laws.

52. Quadvest, L.P. prays that upon final hearing hereof, the duly appointed administrative law judge for SOAH find that Lone Star Groundwater Conservation District's Desired Future Conditions adopted on August 9, 2016 are unreasonable and grant all other relief to which Quadvest, L.P. is entitled under Texas Water Code Section 36.1083 and other applicable laws, together with its reasonable attorneys' fees and costs of this proceeding.

Respectfully submitted,

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APPENDIX A

1. Exhibit 1: GMA 14 Resolution 2016-01-01;
2. Exhibit 2: Minutes of August 9, 2016 Meeting of Board of Directors of LSGCD (highlighting in original);
3. Exhibit 3: HAGM Run Rev20140610; [10]
4. Exhibit 4: Map of the DFCs for the Chicot aquifer as it exists in GMA 14 as adopted by the Districts;
5. Exhibit 5: Map of the DFCs for the Evangeline aquifer as it exists in GMA 14 as adopted by the Districts;
6. Exhibit 6: Map of the DFCs for the Jasper aquifer as it exists in GMA 14 as adopted by the Districts;
7. Exhibit 7: TERS Report
8. Exhibit 8: Affidavit of Michael Thornhill;
9. Exhibit 9: TWDB Memorandum dated March 10, 2010;
10. Exhibit 10: GMA 14 Explanatory Report; [11]
11. Exhibit 11: Administrative Rules of GMA 14.

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[10] HAGM Run Rev20140610 is not attached to this Petition because (a) it is a publicly available document and (b) a printout of the document would be voluminous at an estimated 60,000 pages. However, Petitioners refer to HAGM Run Rev20140610 in its entirety because GMA 14 and LSGCD appear to have adopted hundreds of thousands of individual DFCs described in that model. An electronic version of Exhibit 3 will be made available at or before the hearing or on request.

[11] Produced here without appendices, which will be produced at or before the hearing or on request.